

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

REBECCA L. SCHOLS, )  
Plaintiff, ) No. CV-10-253-CI  
v. ) ORDER GRANTING PLAINTIFF'S  
MICHAEL J. ASTRUE, ) MOTION FOR SUMMARY JUDGMENT  
Commissioner of Social )  
Security, )  
Defendant. )

BEFORE THE COURT are cross-Motions for Summary Judgment. (ECF No. 19, 21.) Attorney Maureen J. Rosette represents Rebecca L. Schols (Plaintiff); Special Assistant United States Attorney Franco L. Bacia represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. (ECF No. 7.) After reviewing the administrative record and briefs filed by the parties, the court **GRANTS** Plaintiff's Motion for Summary Judgment and **DENIES** Defendant's Motion for Summary Judgment.

## JURISDICTION

Plaintiff protectively filed for disability insurance benefits (DIB) on March 4, 2004, and Supplemental Security Income (SSI) on March 5, 2004. (Tr. 83-85; 236-38.) She alleged disability due to "knee problems, degenerative joint disease, right leg, hips and back." (Tr. 121.) She ultimately alleged an onset date of February 13, 2004.<sup>1</sup> (Tr. 36; 265.) Her claim was denied initially and on

<sup>1</sup>Plaintiff initially alleged an onset date of June 1991, the date of the original injury to her knee. At the administrative

1 reconsideration. (Tr. 57-58; 61-64.) Plaintiff requested a hearing  
2 before an administrative law judge (ALJ), which was held on  
3 September 6, 2006, before ALJ Richard Say. (Tr. 243-66.) At the  
4 hearing, vocational expert Thomas Moreland and Plaintiff testified.  
5 (Tr. 246-65.) The ALJ denied benefits on September 13, 2006. (Tr.  
6 36-42.)

7 The Appeals Council vacated the ruling, and remanded to the ALJ  
8 to (1) provide specific reasons to support a negative credibility  
9 finding for Plaintiff; (2) perform an adequate evaluation of Dr.  
10 Yurasek's opinion, and re-evaluate Plaintiff's maximum sustainable  
11 residual functional capacity; (3) address the State Agency  
12 consultant opinions that Plaintiff could perform reduced light work  
13 and carry 20 pounds occasionally and 10 pounds frequently; (4)  
14 resolve the inconsistency between the DOT that indicated a cashier  
15 job was light and the Vocational Expert testimony that the job could  
16 be performed as sedentary; and (5) if necessary, obtain evidence  
17 from a medical expert to clarify the nature and severity of  
18 Plaintiff's orthopedic impairments. (Tr. 45-47.)

19 The second hearing was held on March 25, 2008, before ALJ  
20 Richard Say. (Tr. 267-81.) At that hearing, Plaintiff and Vocational  
21 Expert Deborah LaPoint testified. (Tr. 270-81.) The ALJ denied  
22 benefits on April 25, 2008. (Tr. 19-28.) The Appeals Council  
23 denied review. (Tr. 7-9.) The instant matter is before this court  
24 pursuant to 42 U.S.C. § 405(g).

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hearing, she amended her onset date to the date she last worked, or  
28 February 13, 2004. (Tr. 36; 265.)

**STATEMENT OF THE CASE**

The facts of the case are set forth in detail in the transcript of proceedings and are briefly summarized here. At the time of the second hearing, Plaintiff was 31 years old. (Tr. 271.) She earned a GED in 1994. (Tr. 246.) Plaintiff lives in a house with her husband and five children, ages 18 to four years old. (Tr. 247.) Plaintiff testified that her knee trouble began with a 1991 horseback riding incident when "a tree limb puncture[d] the skin and underneath the kneecap tearing the bursa sac out of my knee." (Tr. 248.) As a result, she had several knee surgeries over the years. (Tr. 250-51.) Nevertheless, Plaintiff worked driving combines, as a construction flagger, cashier checker, and as a stockroom worker. (Tr. 248-49; 260.) Plaintiff testified that she was training to become a secretary when she realized she was unable to handle the physical requirements of the job. She could not crouch or kneel as was necessary to complete filing. (Tr. 250.) She reported the most significant pain is in her lower back. (Tr. 250.) Plaintiff testified that on a good day, she can barely bathe and dress herself without help. On a bad day, she does not get out of bed because she cannot feel her feet, and she tends to collapse. (Tr. 251.) Plaintiff stated that she loses feeling in her feet throughout the day. (Tr. 251.) Plaintiff also testified that she has to elevate her knee three to four times per day, for fifteen to twenty minutes at a time to reduce the swelling. (Tr. 255.) Plaintiff said she begins meal preparation, and her teenaged children finish it. (Tr. 251.) Plaintiff testified that her involvement with the laundry consists of turning on the machines, and folding the clothing that her husband and children carry to her. (Tr. 252.) Plaintiff said

1 she never shops alone, can drive a car a short distance, she cannot  
2 sit longer than ten to fifteen minutes and she cannot stand and walk  
3 for longer than fifteen or twenty minutes without stopping to rest.  
4 (Tr. 252-53.) Plaintiff testified that she does not leave the couch  
5 or her bed when she is alone, because she fears falling. (Tr. 257-  
6 58.)

7 **ADMINISTRATIVE DECISION**

8 ALJ Richard Say found Plaintiff's date of last insured for DIB  
9 purposes was September 30, 2005. (Tr. 21.) At step one, the ALJ  
10 found Plaintiff had not engaged in substantial gainful activity  
11 since February 13, 2004, the alleged onset date. (Tr. 21.) At step  
12 two, the ALJ found Plaintiff had the following severe impairments:  
13 (1) degenerative joint disease of the right knee status post injury  
14 in 1991, status post arthroscopy times three; (2) leg length  
15 discrepancy; and (3) back pain. (Tr. 21.) The ALJ determined at  
16 step three Plaintiff's medically determinable impairments, alone and  
17 in combination, did not meet or medically equal one of the listed  
18 impairments in 20 C.F.R., Appendix 1, Subpart P, Regulations No. 4  
19 (Listings). (Tr. 24.) The ALJ found that Plaintiff has the  
20 residual capacity to perform sedentary work as defined in 20 C.F.R.  
21 404.1567(a) and 616.967(a), "except she can only occasionally engage  
22 in stooping, climbing ramps or stairs, and using foot pedals. She  
23 should avoid climbing ladders, ropes, or scaffolds, crouching,  
24 crawling, and kneeling. She must avoid hazards such as heights and  
25 moving machinery and should avoid activities involving vibration."  
26 (Tr. 24.) The ALJ found Plaintiff's subjective complaints regarding  
27 functional limitations were not fully credible. (Tr. 25.) He found  
28 that Plaintiff was unable to perform any past relevant work. (Tr.

1 26.) The ALJ concluded that Plaintiff could work as a telemarketer  
 2 or cashier. (Tr. 27.) The ALJ found that Plaintiff's impairments  
 3 and sedentary RFC would reduce the numbers of cashier positions by  
 4 ten percent. (Tr. 27.) The ALJ ultimately found Plaintiff was not  
 5 disabled from February 13, 2004, through the date of his decision  
 6 (April 25, 2008). (Tr. 27-28.)

7 **STANDARD OF REVIEW**

8 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001), the  
 9 court set out the standard of review:

10 A district court's order upholding the Commissioner's  
 11 denial of benefits is reviewed *de novo*. *Harman v. Apfel*,  
 12 211 F.3d 1172, 1174 (9th Cir. 2000). The decision of the  
 13 Commissioner may be reversed only if it is not supported  
 14 by substantial evidence or if it is based on legal error.  
 15 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).  
 16 Substantial evidence is defined as being more than a mere  
 17 scintilla, but less than a preponderance. *Id.* at 1098.  
 18 Put another way, substantial evidence is such relevant  
 19 evidence as a reasonable mind might accept as adequate to  
 20 support a conclusion. *Richardson v. Perales*, 402 U.S.  
 21 389, 401 (1971). If the evidence is susceptible to more  
 22 than one rational interpretation, the court may not  
 23 substitute its judgment for that of the Commissioner.  
 24 *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of*  
 25 *Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

26 The ALJ is responsible for determining credibility,  
 27 resolving conflicts in medical testimony, and resolving  
 28 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th  
 Cir. 1995). The ALJ's determinations of law are reviewed  
 29 *de novo*, although deference is owed to a reasonable  
 30 construction of the applicable statutes. *McNatt v. Apfel*,  
 31 201 F.3d 1084, 1087 (9th Cir. 2000).

32 It is the role of the trier of fact, not this court, to resolve  
 33 conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence  
 34 supports more than one rational interpretation, the court may not  
 35 substitute its judgment for that of the Commissioner. *Tackett*, 180  
 36 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup> Cir. 1984).  
 37 Nevertheless, a decision supported by substantial evidence will

1 still be set aside if the proper legal standards were not applied in  
2 weighing the evidence and making the decision. *Brawner v. Secretary*  
3 *of Health and Human Services*, 839 F.2d 432, 433 (9<sup>th</sup> Cir. 1988). If  
4 there is substantial evidence to support the administrative  
5 findings, or if there is conflicting evidence that will support a  
6 finding of either disability or non-disability, the finding of the  
7 Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-  
8 1230 (9<sup>th</sup> Cir. 1987).

9 **SEQUENTIAL EVALUATION PROCESS**

10 Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the  
11 requirements necessary to establish disability:

12 Under the Social Security Act, individuals who are  
13 "under a disability" are eligible to receive benefits. 42  
14 U.S.C. § 423(a)(1)(D). A "disability" is defined as "any  
15 medically determinable physical or mental impairment"  
16 which prevents one from engaging "in any substantial  
17 gainful activity" and is expected to result in death or  
18 last "for a continuous period of not less than 12 months."  
19 42 U.S.C. § 423(d)(1)(A). Such an impairment must result  
20 from "anatomical, physiological, or psychological  
21 abnormalities which are demonstrable by medically  
22 acceptable clinical and laboratory diagnostic techniques."  
23 42 U.S.C. § 423(d)(3). The Act also provides that a  
24 claimant will be eligible for benefits only if his  
25 impairments "are of such severity that he is not only  
26 unable to do his previous work but cannot, considering his  
27 age, education and work experience, engage in any other  
28 kind of substantial gainful work which exists in the  
national economy . . ." 42 U.S.C. § 423(d)(2)(A). Thus,  
the definition of disability consists of both medical and  
vocational components.

23 The Commissioner has established a five-step sequential  
24 evaluation process for determining whether a person is disabled. 20  
25 C.F.R. §§ 404.1520(a), 416.920(a); see *Bowen v. Yuckert*, 482 U.S.  
26 137, 140-42 (1987). In steps one through four, the burden of proof  
27 rests upon the claimant to establish a *prima facie* case of  
28 entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d

1 920, 921 (9<sup>th</sup> Cir. 1971). This burden is met once a claimant  
 2 establishes that a medically determinable physical or mental  
 3 impairment prevents her from engaging in her previous occupation.  
 4 20 C.F.R. §§ 404.1520(a), 416.920(a). "This requires the  
 5 presentation of 'complete and detailed objective medical reports of  
 6 his condition from licensed medical professionals.'" *Meanel v.*  
 7 *Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999).

8 If a claimant cannot do past relevant work, the ALJ proceeds to  
 9 step five, and the burden shifts to the Commissioner to show that  
 10 (1) the claimant can make an adjustment to other work; and (2)  
 11 specific jobs exist in the national economy which claimant can  
 12 perform. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Kail v.*  
 13 *Heckler*, 722 F.2d 1496, 1497-98 (9<sup>th</sup> Cir. 1984).

#### 14 ISSUES

15 The question is whether the ALJ's decision is supported by  
 16 substantial evidence and free of legal error. Plaintiff contends  
 17 that the ALJ erred by improperly weighing the medical evidence and  
 18 by discrediting her testimony. (ECF No. 20 at 9-14.) Defendant  
 19 contends the ALJ's decision is supported by substantial evidence and  
 20 free of legal error. (ECF No. 22.)

#### 21 DISCUSSION

##### 22 1. Medical Opinions

23 In disability proceedings, a treating physician's opinion  
 24 carries more weight than an examining physician's opinion, and an  
 25 examining physician's opinion is given more weight than that of a  
 26 non-examining physician. *Benecke v. Barnhart*, 379 F.3d 587, 592  
 27 (9th Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995).  
 28 If the treating or examining physician's opinions are not

1 contradicted, they can be rejected only with "clear and convincing" 2 reasons. *Lester*, 81 F.3d at 830. If contradicted, the opinion can 3 only be rejected for "specific" and "legitimate" reasons that are 4 supported by substantial evidence in the record. *Andrews*, 53 F.3d 5 at 1043. 1995). Historically, the courts have recognized 6 conflicting medical evidence, the absence of regular medical 7 treatment during the alleged period of disability, and the lack of 8 medical support for doctors' reports based substantially on a 9 claimant's subjective complaints of pain as specific, legitimate 10 reasons for disregarding a treating or examining physician's 11 opinion. *Flaten v. Secretary of Health and Human Servs.*, 44 F.3d 12 1453, 1463-64 (9th Cir. 1995); *Fair v. Bowen*, 885 F.2d 597, 604 (9th 13 Cir. 1989).

14 On remand, the Appeals Council directed the ALJ to provide 15 rationale with specific references to the record in support of 16 Plaintiff's assessed limitations. This included evaluating, 17 treating, examining and reviewing source opinions, and the Council 18 advised the ALJ to request treating and examining sources to provide 19 additional evidence and/or further clarification about what the 20 Plaintiff can still do despite the impairments. (Tr. 46.) 21 Additionally, the Appeals Council directed that if necessary, the 22 ALJ should obtain evidence from a medical expert to clarify the 23 nature and severity of Plaintiff's orthopedic impairments. (Tr. 24 46.)

25 In this case, Plaintiff argues the ALJ did not set forth 26 specific and legitimate reasons supported by substantial evidence in 27 rejecting the opinions of Karen Schaaf, M.D., and Maria Yurasek, 28 M.D. Dr. Schaaf treated Plaintiff between 2004-06. (Tr. 181-87;

1 204-22.) The ALJ discounted Dr. Schaaf's February 15, 2005, note  
2 asserting Plaintiff could not perform sedentary work due to pain  
3 because Dr. Schaaf failed to identify any change in Plaintiff's  
4 condition, or explain how her condition had deteriorated since June  
5 15, 2004, when Dr. Schaaf previously indicated Plaintiff could  
6 perform sedentary work. (Tr. 25; 187-88.) While the ALJ is correct  
7 that the record contains no explanation to support Dr. Schaaf's  
8 February 2005 change in opinion, the Appeals Council specifically  
9 directed the ALJ to request additional evidence from source opinions  
10 and/or clarification about Plaintiff's impairments. The ALJ failed  
11 to do so, and therefore his reliance upon the absence of evidence to  
12 reject Dr. Schaaf's opinion is error.

13 The ALJ also concluded that both Dr. Schaaf's and Dr. Yurasek's  
14 diagnoses were contradictory to the MRI and x-ray imaging studies.<sup>2</sup>  
15 (Tr. 25; 189; 218-19.) The record indicates Dr. Schaaf treated  
16 Plaintiff, reviewed her test results and concluded Plaintiff  
17 suffered from arthritis of the lumbar spine L3-4, L4-5, noting that  
18 the MRI confirmed Plaintiff's mid and lower lumbar as the area of  
19 facet joint inflammation. (Tr. 211.) The ALJ rejected Dr. Schaaf's  
20 diagnosis, and asserted that the September 2005 MRI of the lumbar  
21 spine showed mild degenerative changes and the July 21, 2004, hip x-  
22 rays were negative. (Tr. 25; 189; 218-19.) The ALJ concluded that  
23 Dr. Schaaf's diagnosis was "inconsistent with imaging studies."

25 \_\_\_\_\_  
26 <sup>2</sup>The ALJ references "1F/6-7" as knee x-ray results. It is  
27 likely the ALJ intended to refer to the 2001 and 2003 x-rays that  
28 revealed "mild degenerative joint disease" and "minimal degenerative  
change." (Tr. 155-56.)

1 (Tr. 25.)

2       Similarly, the ALJ rejected Dr. Yurasek's diagnosis, on the  
3 basis that it was inconsistent with the objective medical evidence.  
4 (Tr. 25.) The record reveals Dr. Yurasek examined Plaintiff in  
5 December 2004, reviewed her records and concluded Plaintiff has  
6 right knee pigmented villonodular synovitis, as well as sclerosis of  
7 the tibia, and degenerative joint disease affecting the hips. (Tr.  
8 173-74.) However, the ALJ discounted Dr. Yurasek's diagnosis on  
9 the basis that it was inconsistent with the x-rays: "Dr. Yurasek  
10 diagnosed degenerative joint disease of the hips, yet x-rays were  
11 normal. Lumbar spine MRI showed only mild degenerative changes and  
12 does not support the severe range of motion limitations set forth by  
13 Dr. Yurasek." (Tr. 25-26.)

14       An ALJ may not substitute his interpretation of laboratory  
15 reports for that of a physician. *Ferguson v. Schweiker*, 765 F.2d  
16 31, 37 (3d Cir. 1985). "An ALJ is not free to set his own expertise  
17 against that of a physician who presents competent evidence." *Id.*,  
18 765 F.2d at 37. Further, an ALJ may not act as his own medical  
19 expert, substituting his opinion for a professional interpretation  
20 of the clinical testing. *Day v. Weinberger*, 522 F.2d 1154, 1156  
21 (9th Cir. 1975); see also *Nguyen v. Chater*, 172 F.3d 31, 35 (1st  
22 Cir. 1999) (as a lay person, an ALJ is "not at liberty to ignore  
23 medical evidence or substitute his own views for uncontested  
24 medical opinion"; he is "simply not qualified to interpret raw  
25 medical data in functional terms"); *Balsamo v. Chater*, 142 F.3d 75,  
26 81 (2nd Cir. 1998) ("'[T]he ALJ cannot arbitrarily substitute his  
27 own judgment for competent medical opinion . . . .'" (Citations  
28 omitted)); *Rohan v. Chater*, 98 F.3d 966, 970 (7th Cir. 1996) (ALJ

1 "must not succumb to the temptation to play doctor and make [his]  
2 own independent medical findings").

3 In this case, it was inappropriate for the ALJ to reject both  
4 Dr. Schaaf and Yurasek's findings by substituting his own medical  
5 conclusions for that of two physicians, particularly where the ALJ  
6 did not seek the testimony of a medical expert. See *Tackett*, 180  
7 F.3d at 1102-03 (9th Cir. 1999) (inappropriate for an ALJ to  
8 substitute his own medical judgment for that of a treating  
9 physician).

10 To the extent the ALJ found Dr. Schaaf or Dr. Yurasek's  
11 respective diagnoses ambiguous or otherwise inadequate, it was  
12 incumbent upon the ALJ to contact these physicians as the Appeals  
13 Council advised, or call a medical expert to assist in determining  
14 the extent to which the medical records reflected limitations on  
15 Plaintiff's ability to work. See *Mayes v. Massanari*, 276 F.3d 453,  
16 459-60 (9th Cir. 2001) (although plaintiff bears the burden of  
17 proving disability, the ALJ has an affirmative duty to assist the  
18 claimant in developing the record "when there is ambiguous evidence  
19 or when the record is inadequate to allow for proper evaluation of  
20 the evidence"); See, also, *Ferguson*, 765 F.2d at 37 ("if the ALJ  
21 believed that Dr. Scott's reports were conclusory or unclear, it was  
22 incumbent upon the ALJ to secure additional evidence from another  
23 physician"). Additionally, where it is necessary to enable the ALJ  
24 to resolve an issue of disability, the duty to develop the record  
25 may require consulting a medical expert or ordering a consultative  
26 examination. See 20 C.F.R. §§ 404.1519a, 416.919a.

27 Since the ALJ's residual functional capacity assessment is  
28 predicated, at least in part, on his conclusions that lack

1 substantial evidence, this court cannot find such errors harmless.  
2 Accordingly, this case must be remanded to permit the ALJ properly  
3 to consider the medical opinion evidence.

4 **2. Credibility**

5 Plaintiff also contends that the ALJ erred by discounting her  
6 credibility. The Appeals Council ordered the ALJ to provide  
7 specific reasons, supported by the evidence of record, for  
8 concluding Plaintiff's testimony is not credible. (Tr. 46.) On  
9 remand, the ALJ found that Plaintiff's subjective complaints about  
10 the extent of her functional limitations not fully credible. (Tr.  
11 25.) In determining Plaintiff's credibility, the ALJ relied in part  
12 upon his interpretation of the medical evidence. The ALJ stated  
13 that Plaintiff's testimony that she spends most of her days in bed  
14 due to knee, hip and back pain was not credible because "the  
15 objective evidence here fails to support the need to lay supine for  
16 most of a day." (Tr. 25.) In support of this conclusion, the ALJ  
17 cited the lumbar MRI from September 2005, and hip and knee x-rays.  
18 (Tr. 25.) Again, an ALJ may not substitute his interpretation of  
19 laboratory reports for that of physician. *Ferguson*, 765 F.2d at 37.  
20 It was error for the ALJ to rely upon his own interpretation of the  
21 objective tests, in lieu of obtaining medical testimony from an  
22 expert.

23 Additionally, in determining Plaintiff's credibility, the ALJ  
24 relied in part upon the fact that Plaintiff was not taking  
25 medication. (Tr. 25.) Plaintiff testified she is without insurance  
26 and cannot afford to see a doctor. (Tr. 271.) Although the Ninth  
27 Circuit has held that an unexplained, or inadequately explained,  
28 failure to seek treatment can cast doubt on the sincerity of a

1 claimant's pain testimony, *Fair*, 885 F.2d at 603, a lack of  
2 treatment is not held against the claimant when the record indicates  
3 that claimant could not afford it. *See Smolen v. Chater*, 80 F.3d  
4 1273, 1284 (9th Cir. 1996) (holding that because the claimant  
5 testified that "she had no insurance and could not afford  
6 treatment," her failure to comply with medication for her symptoms  
7 "is not a clear and convincing reason for discrediting her symptom  
8 testimony"). In discounting Plaintiff's credibility, it was error  
9 for the ALJ to rely upon Plaintiff's lack of medication.  
10 Plaintiff's credibility should be re-evaluated upon remand.

11 **3. Remand**

12 The decision to remand to the Commissioner for further  
13 proceedings or simply to award benefits is within the discretion of  
14 the court. *Harman*, 211 F.3d at 1175-78; *McAllister v. Sullivan*, 888  
15 F.2d 599, 603 (9th Cir. 1989). "If additional proceedings can  
16 remedy defects in the original administrative proceedings, a social  
17 security case should be remanded. Where, however, a rehearing would  
18 simply delay receipt of benefits, reversal and an award of benefits  
19 is appropriate." *McAllister*, 888 F.2d at 603 (citation omitted); see  
20 also *Varney v. Secretary of Health & Human Serv.*, 859 F.2d 1396,  
21 1399 (9th Cir. 1988) ("[G]enerally, we direct the award of benefits  
22 in cases where no useful purpose would be served by further  
23 administrative proceedings . . . or where the record has been  
24 thoroughly developed.")

25 Here, the errors identified above can be remedied with further  
26 proceedings. On remand, the ALJ should address these errors by  
27 properly evaluating the medical evidence, including the opinions of  
28 Plaintiff's treating providers. Remand also is appropriate to allow

1 the ALJ to properly consider the Plaintiff's subjective complaints  
2 and to incorporate such consideration in evaluating the medical  
3 record and Plaintiff's functional limitations.

4 **CONCLUSION**

5 Having reviewed the record and the ALJ's findings, this court  
6 concludes the ALJ's decision is not supported by substantial  
7 evidence and is based on legal error. Remand consistent with this  
8 decision is necessary. Upon remand, the ALJ shall reconsider  
9 Plaintiff's subjective complaints, the opinions of Drs. Schaaf and  
10 Yurasek, and shall consider the entire record. Accordingly,

11 **IT IS ORDERED:**

12 1. Plaintiff's Motion for Summary Judgment (**ECF No. 19**) is  
13 **GRANTED**. The matter is remanded to the Commissioner for additional  
14 proceedings pursuant to sentence four 42 U.S.C. § 405(g).

15 2. Defendant's Motion for Summary Judgment (**ECF No. 21**) is  
16 **DENIED**.

17 3. An application for attorney fees may be filed by separate  
18 motion.

19 The District Court Executive is directed to file this Order and  
20 provide a copy to counsel for Plaintiff and Defendant. Judgment  
21 shall be entered for Plaintiff and the file shall be **CLOSED**.

22 DATED March 5, 2012.

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S/ CYNTHIA IMBROGNO  
25 UNITED STATES MAGISTRATE JUDGE  
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